

From: Leingang, Ben
Sent: Thursday, May 4, 2017 7:31 AM
To: Hagel, Kirk A.
Subject: FW: Bismarck, North Dakota records request

From: Harris, Eleanor J. (MP) (FBI) [<mailto:Eleanor.Harris@ic.fbi.gov>]
Sent: Thursday, May 04, 2017 8:42 AM
To: Lynn Wanner; Cossey, Barry; Leingang, Ben; Larson, Cody W.; VanHorn, Terry (USAND); Cynthia Elia
Cc: Bryan Hudson; Jim Weiner; Jason O'Neal
Subject: RE: Bismarck, North Dakota records request

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To All:

Response from FBI MP's Associate Division Counsel:

Please keep us posted as they collect and review emails relevant to the request
At a minimum, FBI should be consulted on any emails touching on FBI equities prior to release

Thankyou.

Respectfully,
Eleanor (EJ) Harris
FBI Intelligence Analyst
Bismarck RA, North Dakota
Minneapolis Division
Office 701-223-4875
Cell 701-471-2449
Eleanor.Harris@ic.fbi.gov (UNet)
ejharris@fbi.sgov.gov (SIPRNet)
eharris@fbi.ic.gov (SCINet)

From: Lynn Wanner [<mailto:lwanner@bismarcknd.gov>]
Sent: Thursday, May 04, 2017 8:22 AM
To: Cossey, Barry <barry.cossey@bia.gov>; Leingang, Benjamin (ND) <bleingang@nd.gov>; Larson, Cody W. <cwlarrison@nd.gov>; Harris, Eleanor J. (MP) (FBI) <Eleanor.Harris@ic.fbi.gov>; VanHorn, Terry (USAND) <Terry.VanHorn@usdoj.gov>; Cynthia Elia <cynthia.elia@bia.gov>
Cc: Bryan Hudson <bryan.hudson@sol.doi.gov>; Jim Weiner <jim.weiner@sol.doi.gov>; Jason O'Neal <jason.oneal@bia.gov>
Subject: RE: Bismarck, North Dakota records request

The individual making the request was William Parrish out of California who claims to be a "journalist". I don't have much information on him. Sorry I didn't include you in the original email thread, I was a little frazzled at the request.

This was the first email received:

"I am wondering if it's possible to give me a break-down of how many responsive records there are for each search term in my request."

Pursuant to North Dakota's open records law, I am writing with the following request.

I am requesting all e-mails sent or received by Lynn Wanner [lwanner@bismarcknd.gov] between August 1, 2016 and April 1, 2017 that include any of the following terms: "protest," "pipeline," "DAPL," "construction," "intelligence," "intel," "FBI," "Facebook," "leader," "Markus," "Nastacio," "Fallis," "Iron Eyes," "Sumiyeh," "company," "Dakota Access," "TigerSwan," "Energy Transfer," "links chart," "helicopter," or "threat."

After finding out I have over 11,000 emails relating in to those search terms in some way (I never deleted anything) and it would have cost him approx. \$28,000 to get that information, the following email was his next request:

The only term that is needed to search is the last one requested "Intel Thread" in the subject. Request: "In such cases where Ms. Wanner sent or received multiple e-mails as part of the same e-mail thread, I **request that you send me only the final e-mail in the thread**, such that I receive only one record of each thread."

Obviously this concerns me for various reasons. One being that he was VERY specific about what he was looking for, leading me to believe there is a leak somewhere. I asked our city's PIO if we could ask why he wants that information and she said no.

I'm still doing some checking on the legality of everything and what I am forced to release. Basically, I've been told I have to go through every email and determine the amount of time it would take to redact anything that can't be release (which also takes time). It's all very confusing to me, honestly.

Lynn

From: Cossey, Barry [<mailto:barry.cossey@bia.gov>]

Sent: Thursday, May 04, 2017 8:09 AM

To: Leingang, Ben; Larson, Cody W.; Lynn Wanner; Harris, Eleanor J. (MP) (FBI); VanHorn, Terry (USAND); Cynthia Elia

Cc: Bryan Hudson; Jim Weiner; Jason O'Neal

Subject: Fwd: Bismarck, North Dakota records request

My fellow trouble makers,

Yesterday I heard of the Open Records request concerning Lynn's emails that appear to target our daily work products. I engaged my legal dept. and their initial response is below. Just want to keep everybody looped in.

Lynn, can you please provide the contact information of the individual making release determinations on this particular request. Need to evaluate the recourse available to BIA and any other interested parties State and Federal prior to release. Please feel free to socialize BIA's intent with your legal advisers in case someone has already developed a course of action addressing release of Law Enforcement Sensitive material at the State and Local levels.

I hope this finds everyone well,

Respectfully,
Barry Cossey

----- Forwarded message -----

From: **Jim Weiner** <jim.weiner@sol.doi.gov>
Date: Thu, May 4, 2017 at 7:51 AM
Subject: Bismarck, North Dakota records request
To: Barry Cossey <barry.cossey@bia.gov>
Cc: Bryan Hudson <bryan.hudson@sol.doi.gov>

Good morning, Mr. Cossey. Bryan and I briefly discussed this (he called from the road) yesterday and then I had a conversation with my colleagues who handle FOIA matters. I explained that a state with which we communicated and collaborated in managing law enforcement aspects of the Standing Rock situation has a request under its state FOIA-equivalent Open Records law for release of thousands of documents (emails) involving our personnel and operations. We believe the state is inclined to release documents that, if subject to a federal FOIA request, we might withhold or redact. We have an interest in protecting information in the records.

They did not think that we have a straightforward judicial or procedural challenge because (a) the state entity has the records in its possession (thus, subject to the request) and (b) state law may permit release where we'd reserve or could assert greater withholding privileges under federal FOIA law. Of course, we need to determine if there are mechanisms under the ND Open Records law by which a third party (us) may challenge a proposed state release. This would be analogous to our "reverse FOIA" process.

Ultimately, they advised (based on only limited information) that the best thing is, at least now, to engage with the responsive state or city officials and articulate our interests and proposed involvement, if any, with the release. In other words, try to negotiate an acceptable outcome mindful of everyone's interests.

This is not to say that if the state absolutely refuses to cooperate *and* the imminent release threatens dire outcomes (say, endangering law enforcement operations, personnel, informants, etc), that the Federal government could never seek an injunction. It's possible, but we'd need to read in DOJ P-D-Q.

Please advise of status and I'll bring my colleagues in as may be necessary.

Best Regards, Jim

Sent from my iPhone

On May 3, 2017, at 2:00 PM, Barry Cossey <barry.cossey@bia.gov> wrote:

Sir,

Mr. Hudson has an out of office reply naming you as the recipient of his workload (paraphrased). If you have a moment please review my question below.

Respectfully,

Barry J. Cossey

Program Analyst

Bureau of Indian Affairs

Office of Justice Services

5924 NW 2nd St, Suite 650

Oklahoma City, OK 73127

Office: (405)603-1573

Cell: (405)638-0256

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PERMISSION OF THE SENDER**

From: Barry Cossey [mailto:barry.cossey@bia.gov]
Sent: Wednesday, May 03, 2017 12:57 PM
To: Bryan Hudson
Cc: William McClure; Justin Wendland; Darren Cruzan; David Little Wind; Richard Melville; Cynthia Elia; Jason Thompson; Jason O'Neal
Subject: RE: FYI

Mr. Hudson,

Below Mrs. Elia is referring to an Open Records Request to the City of Bismarck, North Dakota. Specifically, the request targets Intel products produced by BIA, other Federal Partners, State and local law enforcement agencies. Is there a preemptive way to prevent the City of Bismarck from disclosing any law enforcement product produced by BIA personnel?

Respectfully,

Barry J. Cossey

Program Analyst

Bureau of Indian Affairs

Office of Justice Services

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From: Elia, Cynthia [<mailto:cynthia.elia@bia.gov>]

Sent: Wednesday, May 03, 2017 12:07 PM

To: Jason Thompson; Jason O'Neal

Cc: William McClure; Justin Wendland; Cruzan, Darren; David Little; Richard Melville; Barry Cossey

Subject: FYI

I received a phone call from North Dakota SLIC office, whom we were embedded with during the protest. They informed me that the attorney below had requested all emails from Bismarck PD's Analyst Lynn Wanner. There are 11,000 emails, (containing our names, email addresses, etc.), that possibly could be released. North Dakota is an "open records" state.

I have discussed this with Barry and he will make some phone calls.

I am just making all of you aware of this, as well. Thank you!!

--

Cynthia Elia

Crime/Program Analyst

Bureau of Indian Affairs

Office of Justice Services

202-763-5581 (cell)

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Barry J. Cossey

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